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Hubbell Incorporated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARKEL AMERICAN INSURANCE  
COMPANY,

Plaintiff,

v.

PACIFIC ASIAN ENTERPRISES,  
INC., a California corporation;  
LEVITON MANUFACTURING CO.,  
INC., a Delaware corporation;  
HUBBELL INCORPORATED, a  
Connecticut corporation; and DOES 1-  
100, inclusive,

Defendants.

CASE NO. CV07-05749 SC

**REPLY BRIEF IN SUPPORT OF  
DEFENDANT HUBBELL  
INCORPORATED'S MOTION TO  
DISMISS**

Date: February 26, 2008  
Time: 9:00 a.m.  
Place: Courtroom 1, 17th floor (Judge  
Conti)

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. VENUE IS INAPPROPRIATE IN THIS DISTRICT**

Plaintiff argues that venue is appropriate in the Northern District of California because, under 28 U.S.C. § 1391(c), all three defendants may properly be considered residents of this district, such that venue exists under 28 U.S.C. § 1391(a)(1). However, the lack of any substantive information about the incident underlying this suit makes it impossible for Hubbell to evaluate whether the Northern District of California is the proper venue in which to litigate this matter. Without for more facts, Hubbell cannot determine whether to move to transfer this suit to a more appropriate venue.

There is little doubt that the facts such as the location of the accident and location of the vessel are in Plaintiff's possession, considering it has reviewed the claim for the engine fire and paid its insured. This information is necessary for the Court and the parties to evaluate whether some of the critical factors for determining proper venue, such as "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises", *see Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)), weigh in favor of transfer. Without these facts, Plaintiff simultaneously has failed to demonstrate that venue is appropriate in the Northern District of California and has withheld the information needed to determine the most appropriate court for this matter.

**II. PLAINTIFF'S COMPLAINT DOES NOT ALLEGE SUFFICIENT FACTS TO WITHSTAND A MOTION TO DISMISS**

Plaintiff argues that its Complaint meets the standards for notice pleading outlined by Fed. R. Civ. Proc. 8(a). Opp. at 2-3. It alleges that by merely stating that some product purportedly manufactured and sold by Hubbell was defective,

1 Plaintiff has satisfied the requirement to provide Hubbell with sufficient notice of  
2 the facts underlying its claims. Plaintiff then attempts to shift its burden of notice  
3 to Hubbell, stating that “Hubbell is certainly aware of its own records of sales, the  
4 standards for manufacture of its component parts and the nature of the business it  
5 conducted with the vessel manufacturer.” Opp. at 3.

6 This sentence alone demonstrates the insufficiency of the Complaint. This is  
7 the first time that Plaintiff has alleged that Hubbell sold the purportedly defective  
8 part in question to vessel manufacturer PAE. The Complaint, in fact, alleges  
9 otherwise: ¶ 17 states that Plaintiff believes that “Hubbell...designed,  
10 manufactured, assembled, distributed, and sold electrical components supplied to  
11 defendant PAE for use and installation on *Boundless Grace*.” (Emphasis added.)  
12 There was no information in the Complaint to indicate that Hubbell had entered  
13 into a relationship with PAE itself. Plaintiff’s assertion that “[c]ertainly,  
14 [Hubbell’s] knowledge of these facts is superior to plaintiff’s knowledge” and that  
15 Hubbell can simply check its records is inconsistent with the pleadings, which  
16 instead assert that Hubbell sold these devices to an unnamed intermediate supplier.

17 Not knowing the name or nature of the allegedly defective problem is not a  
18 mere detail to be worked out during discovery. Contrary to Plaintiff’s assertion,  
19 Hubbell can and will have significant problems putting forth affirmative defenses  
20 and otherwise answering the Complaint when it is ignorant of the identities of the  
21 product and supplier, and has been provided no indirect information regarding  
22 when, how, or why its product supposedly became incorporated into the *Boundless*  
23 *Grace*. Because Plaintiff provided scarce details regarding the nature of Hubbell  
24 products involved in the incident at issue, it fails to provide Hubbell with the notice  
25 required under Rule 8(a) and to state a claim for which relief may be granted.  
26 Plaintiff’s Complaint should be dismissed.

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28

1 **III. IN LIEU OF DISMISSAL, A MORE DEFINITE STATEMENT MAY**  
2 **PROVIDE HUBBELL WITH SUFFICIENT NOTICE TO DEFEND ITSELF**

3 Despite Plaintiff's statement that "there is no proper basis to require more  
4 detailed pleadings", this Complaint is plainly inadequate in terms of putting  
5 Hubbell on notice of the nature of the claims against it. In such an instance, this  
6 Court may appropriately order Plaintiff to supplement its pleadings so as to  
7 provide Hubbell with adequate notice of the nature of Plaintiff's allegations, rather  
8 than dismiss the Complaint outright. For the reasons outlined above, the  
9 Complaint is insufficient on its face and a Motion for a More Definite Statement is  
10 appropriate.

11  
12 **IV. CONCLUSION**

13 For the foregoing reasons, Defendant Hubbell Incorporated respectfully  
14 requests that the Court dismiss the Complaint or order Plaintiff to file a more  
15 definite statement.

16  
17 Dated: February 12, 2008

Respectfully submitted,

18 LATHAM & WATKINS LLP

19  
20 By /s/ Yasmin N. Best  
Yasmin N. Best

21 Attorneys for Defendant  
22 Hubbell Incorporated

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